

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Tru-fit Manufacturing Co. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the F.Y.E. 3/31/72 & 3/31/73. :  
AFFIDAVIT OF MAILING

State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of May, 1983, he served the within notice of Decision by certified mail upon Tru-fit Manufacturing Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tru-fit Manufacturing Co.  
111 Port Jersey Blvd.  
Jersey City, NJ 07305

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
27th day of May, 1983.

David Parchuck

William O'Hayland

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of May, 1983, he served the within notice of Decision by certified mail upon Robert Samsel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Samsel  
Louis Sternbach & Co.  
6 E. 43rd St.  
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
27th day of May, 1983.

David Parchuck

Ann R. Hyslop

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 104

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

May 27, 1983

Tru-fit Manufacturing Co.  
111 Port Jersey Blvd.  
Jersey City, NJ 07305

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Robert Samsel  
Louis Sternbach & Co.  
6 E. 43rd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|---|---|----------|
| In the Matter of the Petition                   | : |          |
| of  | : |          |
| TRU-FIT MANUFACTURING CO., INC.                 | : | DECISION |
| for Redetermination of a Deficiency or for      | : |          |
| Refund of Corporation Franchise Tax under       | : |          |
| Article 9-A of the Tax Law for the Fiscal Years | : |          |
| Ending March 31, 1972 and March 31, 1973.       | : |          |

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Petitioner, Tru-Fit Manufacturing Co., Inc., 111 Port Jersey Boulevard, Jersey City, New Jersey 07305, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ending March 31, 1972 and March 31, 1973 (File No. 29211).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 18, 1983 at 11:05 A.M. Petitioner appeared by Louis Sternbach & Co., C.P.A.'s (Robert A. Samsel, C.P.A.). The Audit Division appeared by Paul B. Coburn, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether petitioner maintained a regular place of business outside New York State for the fiscal years ending March 31, 1972 and March 31, 1973 and could therefore allocate its income under Tax Law §210.3 for such years.

FINDINGS OF FACT

1. On May 9, 1980, the Audit Division issued five Notices of Deficiency against petitioner Tru-Fit Manufacturing Co., Inc. (hereinafter, "Tru-Fit"), showing corporation franchise tax deficiencies under Article 9-A of the Tax Law

of \$15,882.63 plus interest, \$41,460.41 plus interest, \$4,749.36 plus interest, \$912.82 plus interest and \$220.07 plus interest for the periods ending March 31, 1972, March 31, 1973, November 30, 1973, November 30, 1974 and November 30, 1975, respectively. Attached to each Notice of Deficiency was a Statement of Audit Adjustment explaining that each of the respective deficiencies was based upon a "recent field audit" and showing the tax per field audit and the tax per report for each fiscal year. Petitioner has challenged only the deficiencies imposed by the Audit Division for the fiscal years ending March 31, 1972 and March 31, 1973.

2. Petitioner, on the Form CT-3, New York State Corporation Franchise Tax Report, which it filed for its fiscal year ending March 31, 1972, claimed a business allocation percentage of 70.6413 percent based upon the following computation:

|  | <u>New York</u>    | <u>Everywhere</u>  |
|--|--------------------|--------------------|
| Real estate rented   | \$1,173,720        | \$1,240,920        |
| Inventories owned  | 768,735            | 768,735            |
| Other tangible personal property owned   | 148,102            | 148,102            |
| Total  | <u>\$2,090,557</u> | <u>\$2,157,757</u> |
| Percentage in New York   | 96.8857%           |                    |
| Receipts, in the regular course of<br>business, from:  |                    |                    |
| Sales of tangible personal property<br>where shipments are made to points<br>within New York | \$1,436,016        |                    |
| All sales of tangible personal property  |                    | \$9,748,919        |
| Other business receipts  | 35,374             | 35,374             |
| Percentage in New York   | 15.0383%           |                    |
| Percentage in New York of wages, salaries<br>and other compensation of employees             | 100.0000%          |                    |
| Total of above three percentages   | 211.9240%          |                    |
| Business allocation percentage, total<br>of percentages divided by three                     | 70.6413%           |                    |

3. Petitioner, on the Form CT-3, New York State Corporation Franchise Tax Report, which it filed for its fiscal year ending March 31, 1973, claimed a business allocation percentage of 68.6617 percent based upon the following computation:

|  | <u>New York</u>    | <u>Everywhere</u>  |
|--|--------------------|--------------------|
| Real estate rented                     | \$1,253,024        | \$1,413,552        |
| Inventories owned                      | 1,127,796          | 1,127,796          |
| Other tangible personal property owned | 170,548            | 170,548            |
| Total                                  | <u>\$2,551,368</u> | <u>\$2,711,896</u> |

|                        |          |
|------------------------|----------|
| Percentage in New York | 94.0806% |
|------------------------|----------|

Receipts, in the regular course of business, from:

|  |             |              |
|--|-------------|--------------|
| Sales of tangible personal property where shipments are made to points within New York | \$1,681,414 |              |
| All sales of tangible personal property  |             | \$14,130,263 |
| Other business receipts  | 733         | 733          |
| Percentage in New York   | 11.9046%    |              |
| Percentage in New York of wages, salaries and other compensation of employees          | 100.0000%   |              |
| Total of above three percentages   | 205.9852%   |              |
| Business allocation percentage, total of percentages divided by three                  | 68.6617%    |              |

4. Petitioner reported entire net income of \$595,687.00 and \$1,464,222.00 for the fiscal years ending March 31, 1972 and March 31, 1973, respectively. After applying the respective business allocation percentages noted in Findings of Fact "2" and "3", herein, petitioner reported taxable net income of \$420,801.00 and \$1,005,364.00 and tax of \$37,789.47 and \$90,191.00 for the fiscal years ending March 31, 1972 and March 31, 1973, respectively.

5. The Audit Division, contending that petitioner had no regular place of business outside New York during the fiscal years at issue, changed petitioner's business allocation percentage for each of the two periods to one hundred percent.

6. Petitioner is a manufacturer of ladies' garments, including the popular "Fire Islander" line. Prior to July, 1973, its general executive offices and manufacturing facilities were located in New York City. In July, 1973, petitioner opened a manufacturing plant in Jersey City, New Jersey.

7. Petitioner contends that during the fiscal years at issue, it maintained a regular place of business in various cities outside New York, including Los Angeles, California; Miami, Florida; Dallas, Texas; and Atlanta, Georgia. It appears that space rented by petitioner in such cities was in various trade-mart buildings such as the California Mart in Los Angeles and the Apparel Mart in Dallas, and was used primarily by petitioner's independent sales representatives as a showroom for the display of petitioner's merchandise to potential customers. Petitioner did not have telephone listings in its own name in these cities outside New York.

Petitioner introduced evidence that two of its employees, Harris A. Engelson and Vincent Richardson, as well as Harold Lerner and Frank Lerner, President and Secretary, respectively, of petitioner during the years at issue, travelled to and utilized the showrooms described above. However, no evidence was introduced concerning the specific activities and duties of such company officers and employees while they were away from their New York offices.

8. Petitioner did not file any state or local income or franchise tax reports during the years at issue except those it filed with the State of New York.

#### CONCLUSIONS OF LAW

A. That Tax Law section 210.3(a)(4) provides in part:

"(T)hat for taxable years beginning before January first, nineteen hundred seventy-eight, if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred percent."

B. That 20 NYCRR 4.11, which was effective prior to January 1, 1976, defined "regular place of business", in part, as "any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business."

C. That pursuant to Tax Law §1089(e), petitioner has the burden of proof to show that it had a regular place of business outside New York.

D. That petitioner did not sustain its burden of proof to show that it had a regular place of business outside New York during the years at issue. All of petitioner's employees appear to have worked out of its New York offices. (Petitioner, in its tax reports for the years at issue as noted in Findings of Fact "2" and "3", herein, reported that 100 percent of the wages, salaries, and other compensation of its employees was allocable to New York.) Nor did petitioner file franchise tax returns with any jurisdiction other than New York. Matter of Jack Corcoran Associates, Inc., State Tax Commission, June 5, 1981.

E. That the petition of Tru-Fit Manufacturing Co., Inc. is denied and the Notices of Deficiency issued on May 9, 1980 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983

Rodrich Arden  
PRESIDENT

Frank R. Koenig  
COMMISSIONER

[Signature]  
COMMISSIONER